

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

PAU SIAN MUNG,

Plaintiff,

v.

ADVANCED FRESH CONCEPTS  
FRANCHISE CORP.,

Defendant.

Case No. \_\_\_\_\_

Removed from Superior Court of  
Newton County  
Court File No. SUCV2023001844

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Advanced Fresh Concept Franchise Corp. (*AFC*) hereby gives notice of its removal to this Court of the case captioned *Pau Sian Mung v. Advanced Fresh Concepts Franchise Corp.*, Case No. SUCV2023001844, from the Superior Court of Newton County, Georgia (*State Court*). AFC states the grounds for removal as follows:

1.

*Operative Filings.* On August 11, 2023, an action was filed in the State Court, entitled *Pau Sian Mung v. Advanced Fresh Concepts Franchise Corp.*, Case No. SUCV2023001844, on behalf of Plaintiff Pau Sian Mung (*Plaintiff*) and against AFC. An accurate copy of the summons and original complaint are

attached as *Exhibit 1 (Summons)* and *Exhibit 2 (Original Complaint)* respectively. The original complaint purports to state two (2) claims: breach of contract and breach of the covenant of good faith and fair dealing.

2.

A document entitled “Motion to Correct Misnomer pursuant to O.C.G.A § 9-10-132” was executed by Plaintiff’s counsel on August 22, 2023 (*Motion to Correct Misnomer*). An accurate copy of the Motion to Correct Misnomer is attached as *Exhibit 3*.

3.

A document entitled “Amended Complaint for Breach of Contract, Breach of Implied Covenant of Good Faith and Fair Dealing and Attorney’s Fees” was executed by Plaintiff’s counsel on August 22, 2023 (*Amended Complaint*). An accurate copy of the Amended Complaint is attached as *Exhibit 4*. The only amendment within the Amended Complaint is the corrected spelling of Plaintiff’s name and the corrected location of the Georgia franchise operation. (Amended Complaint, p. 1 (para. 1).)

4.

*Notice To AFC*. The first date upon which AFC received service of process of the State Court action was August 18, 2023, when AFC’s registered agent for

service of process in Georgia was served with a copy of the Summons and Original Complaint.

5.

*Basis For Subject Matter Jurisdiction.* This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332 and is one which may be removed to this Court by AFC pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive of interests and costs.

6.

*Amount In Controversy.* Neither the Original Complaint nor the Amended Complaint allege any specific amount of damages being requested. However, Defendant has a good faith basis to contend that the amount in controversy in this case is in excess of \$75,000, exclusive of interest and costs, and satisfies the jurisdictional amount under 28 U.S.C. 1332(a). Specifically, the amount in controversy is estimated on the following facts: Plaintiff executed his franchise agreement with AFC on September 6, 2022. (Franchise Agreement (*FA*), p. 1, *Exhibit 5*). Pursuant to paragraph two of the FA, the FA had a term of five years, which expired on September 5, 2027, unless AFC elected to renew the FA.

However, AFC gave notice to Plaintiff of AFC's election, pursuant to the FA's terms, to immediately terminate the FA *for cause* (i.e., *inter alia*, theft and dishonesty), effective on July 23, 2023. As a result, the FA had just over four years remaining on its term when AFC terminated the FA. Between September 6, 2022, and through to July 23, 2023, Plaintiff's franchise operation was paid commissions which includes royalties, net of costs for product purchases from and fees to AFC, in the following amounts pursuant to the FA beginning as of September 6, 2022:

<b><i>Date Range</i></b>	<b><i>Amount</i></b>
01/02/2023 – 02/05/2023	\$6,625.22
02/06/2023 – 03/05/2023	\$12,258.68
03/06/2023 – 04/02/2023	\$11,208.98
04/03/2023 – 05/07/2023	\$19,478.58
05/08/2023 – 06/04/2023	\$11,820.32
06/05/2023 – 07/02/2023	\$18,532.48
<b><u>Total:</u></b>	<b><u>\$79,924.26</u></b>

Without conceding any damages, the scope of any damages, the scope of Plaintiff's additional operating costs, or any particular methodology for calculating alleged damages, the amount in controversy is reasonably estimated to be over \$75,000 when extrapolating the estimated royalties that would have likely been paid to Plaintiff had the FA naturally expired its *five-year term* on September 5, 2027.

7.

*Complete Diversity.* Complete diversity of citizenship exists because the following establishes the alleged predicate relationship began and the alleged wrongful acts took place while Plaintiff was a citizen of the *State of Georgia*, while AFC is a corporation incorporated under the laws of the *State of California* and having its principal place of business in the State of California. (Amended Complaint, p. 1-2 (paras. 1, 2, 4, and 5), *Exhibit 3*; FA, p. 1, *Exhibit 5*.) Specifically, Plaintiff is citizen of the State of Georgia. AFC is a citizen of the State of California. AFC is also the only named defendant and the only party served with a summons and complaint in this action.

8.

*Removal Is Timely.* A notice of removal may be filed within thirty (30) days after the defendant receives a copy of the initial pleading, motion or other paper from which it may be ascertained that the case is removable. 28 U.S.C. § 1446(b). AFC received a copy of the initial pleading when a copy of the Summons and Original Complaint was served on AFC's agent for service of process on August 18, 2023.

9.

*Removal has been to Proper Court.* This Court is part of the district and division within which the action was filed - Newton County, Georgia. 28 U.S.C. § 1446(a).

10.

*Pleadings and Process are attached.* Consistent with 28 U.S.C. § 1446(a), a “copy of all process, pleadings and orders” that AFC has received is attached to this Notice of Removal as *Exhibits 1-6*. AFC has not answered or otherwise filed a response to any complaint filed in the State Court action.

11.

*Notice shall be provided to the State Court and the Plaintiff.* A copy of this Notice of Removal is being filed with the Clerk of the Superior Court for Newton County and is being served on counsel of record for Plaintiff, consistent with 28 U.S.C. § 1446(d).

12.

AFC reserves the right to amend or supplement this Notice of Removal.

13.

Attached as *Exhibit 6* is the Civil Case Cover Sheet for the Northern District of Georgia for this matter.

*Wherefore*, this Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a), and AFC removes this Action to this Court pursuant to 28 U.S.C. § 1441(b) for further proceedings according to law.

Respectfully submitted this 14th day of September, 2023.

**Hendrick Phillips Salzman & Seigel, P.C.**

/s/ Martin R. Salzman  
Martin R. Salzman  
Georgia State Bar No. 623450  
mrs@hpsslaw.com  
Jason A. Kamp  
Georgia State Bar No. 323891  
jak@hpsslaw.com

Attorneys for Defendant  
Advanced Fresh Concepts Franchise Corp.

230 Peachtree Street, N.W., Suite 2500  
Atlanta, CA 30303-1515  
T: (404) 522-1410  
F: (404) 522-9545

### **CERTIFICATE OF COMPLAINT**

I hereby certify that the foregoing document (titled: **NOTICE OF REMOVAL**) has been prepared in accordance with the font type and margin requirements of Local Rule 5.1(C) of the Northern District of Georgia, using 14-point Times New Roman, as approved by the Court.

Dated: September 14, 2023

/s/ Martin R. Salzman  
Martin R. Salzman  
Georgia State Bar No. 623450  
mrs@hpsslaw.com  
Jason A. Kamp  
Georgia State Bar No. 323891  
jak@hpsslaw.com

Attorneys for Defendant  
Advanced Fresh Concepts Franchise Corp.



### **CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2023, I filed the foregoing document (titled: **NOTICE OF REMOVAL**) with the Clerk of the Court using the CM/ECF electronic filing system and served upon all counsel of record via electronic transmission or United States mail, postage prepaid, and properly addressed as follows:

Donato Palumbo  
Palumbo Law, LLC  
2323 Brockett Rd.  
Tucker, Georgia 30084  
T: (470) 275-1500  
F: (678) 443-7854  
[dan@palumbolawga.com](mailto:dan@palumbolawga.com)  
(Attorney for Plaintiff)

Dated: September 14, 2023

**Hendrick Phillips Salzman & Seigel, P.C.**

/s/ Martin R. Salzman  
Martin R. Salzman  
Georgia State Bar No. 623450  
[mrs@hpsslaw.com](mailto:mrs@hpsslaw.com)  
Jason A. Kamp  
Georgia State Bar No. 323891  
[jak@hpsslaw.com](mailto:jak@hpsslaw.com)

Attorneys for Defendant  
Advanced Fresh Concepts Franchise Corp.

230 Peachtree Street, N.W., Suite 2500

Atlanta, CA 30303-1515

T: (404) 522-1410

F: (404) 522-9545